

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

COMMERCIAL LAWN IRRIGATION, INC.,)	
)	
)	
Plaintiff,)	
)	CIVIL NO. 11-493-GPM-SCW
vs.)	
)	
MONROVIA NURSERY COMPANY, INC.)	
)	
Defendant.)	

MEMORANDUM AND ORDER

MURPHY, District Judge:

On September 16, 2011, President Barack Obama signed into law the Leahy-Smith America Invents Act. Leahy-Smith America Invents Act, Pub. L. No. 112-29 (125 Stat. 284) (Sep.16, 2011). This new legislation amended 35 U.S.C. § 292, in a multitude of ways, including changing who can sue for the penalty authorized by 35 U.S.C. § 292(a). *Id.* Prior to the amendment, any person could sue for the penalty. See 35 U.S.C. § 292(b). Now, “[o]nly the United States may sue for the penalty authorized by this subsection.” Leahy-Smith America Invents Act, Pub. L. No. 112-29 (125 Stat. 284) (Sep.16, 2011). The new legislation also amended 35 U.S.C. § 292 by adding the following subsection: “(c) The marking of a product, in a manner described in subsection (a), with matter relating to a patent that covered that product but has expired is not a violation of this section.” *Id.* “The amendments made by this subsection shall apply to all cases, without exception, that are pending on, or commenced on or after, the date of the enactment of this Act.” *Id.*

Plaintiff Commercial Lawn Irrigation Inc., claims that 35 U.S.C. § 292, as amended, is

unconstitutional for multiple reasons. The United States of America, through the United States Attorney for the Southern District of Illinois, was given leave to intervene in the action and subsequently filed a brief defending the constitutionality of 35 U.S.C. § 292, as amended.

The Court finds 35 U.S.C. § 292, as amended, *is* constitutional. The Court adopts the reasoning articulated by Chief Judge David R. Herndon in his March 20, 2012 Order for case number 11-cv-190-DRH. Therefore, this case is **DISMISSED with prejudice**.

IT IS SO ORDERED.

DATED: April 2, 2012

/s/ *G. Patrick Murphy*
G. PATRICK MURPHY
United States District Judge